IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 29922 of 2007(K)

PETITIONER:

T.V. MATHEW,
CHEMBAKATHINAL HOUSE, MANNANKARA, THIRUVALLA.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:

THE THIRUVALLA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
THIRUVALLA.

BY SC FOR R1 SRI. SUBHASH CHAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/10/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

W.P.(C). NO. 29922 OF 2007

Dated this the 29th day of October, 2007

J U D G M E N T

The writ petition is filed by the petitioner, who is a contractor of the respondent-Municipality, praying for a direction to the respondent to disburse the amounts collected in excess of the agreed amount towards the value of Bitumen and to pay interest for the said amount at the rate of 12%.

2. Petitioner had undertaken certain works of the Municipality pursuant to Exts.P1 to P5. According to him, the estimates that are appended to these documents clearly mention that it was the obligation of the respondent-Municipality to supply the bitumen to be used in the execution of the work. Petitioner submits that the Municipality in terms of Exts.P1 to P5 had supplied the bitumen and that the Municipality can recover the cost of the material supplied, but however, the same should be at the value as indicated in Exts.P1 to P5. According to the petitioner, amounts in excess of what is indicated in Exts. P1 to P5 have been recovered by the Municipality and it is on that basis petitioner seeks its refund with interest.

3. On the other hand, the Municipality now contends that in terms of the work orders, they have supplied the bitumen and what is appended to Exts.P1 to P5 are only estimates. It is submitted that they are entitled to realise the value of the bitumen that they have supplied and that they have only realised the cost and nothing else. In so far as Ext.P16, relied on by the petitioner is concerned, Municipality would submit that they have sought a clarification from the Government on the scope of Ext.P16 and that the Government by vide letter dated 6.12.06 has clarified that Ext.P16 is only prospective in operation and cannot affect the work orders that were executed prior thereto.

4. The only prayer that is raised and is to be considered is whether the Municipality was entitled to recover the cost it had incurred for the supply of bitumen or whether the Municipality can recover only the amount that is indicated in Exts.P1 to P5. Petitioner has no case that the Municipality had recovered anything excess of what it had incurred. What is indicated in Exts. P1 to P5 and relied on by the petitioner are only estimates and it cannot be the actual cost. Municipality in terms of the obligations undertaken by it has supplied the bitumen and as per the terms of the work order, it has

rightly recovered the cost. The figures indicated in the work orders are only estimates and hence I see no merit in the contentions that nothing more can be recovered. Therefore, the petitioner cannot find fault with the Municipality. On the other hand, if in terms of the work order it was the petitioner's obligation to have supplied the bitumen, then also the situation would not have been different in as much as it would be the petitioner and not the Municipality, who would have suffered the cost.

Therefore, I do not find any error in what the Municipality had done. The writ petition fails and it is accordingly dismissed.

ANTONY DOMINIC, JUDGE

vps